Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

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This issue contains:

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 85-144)

Recordation of Trade Name: "INTERNATIONAL BUSINESS MACHINES CORPORATION"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of recordation.

SUMMARY: On June 26, 1985, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "INTERNATIONAL BUSINESS MACHINES CORPORATION" was published in the Federal Register (50 FR 26434). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views or arguments submitted in opposition to the recordation and received not later than August 26, 1985. No responses were received in opposition to the notice.

Accordingly, as provided in section 133.14, Customs Regulations (19 CFR 133.14), the name "INTERNATIONAL BUSINESS MACHINES CORPORATION" is recorded as the trade name used by International Business Machines Corporation, a corporation organized under the laws of the State of New York, located at Old Orchard road, Armonk, New York 10504. The trademark is used in connection with the following merchandise manufactured in numerous foreign countries: information handling systems and associated component and supplies including data processing equipment; copying machines; printers; word processing; electromechanical office equipment; computers; terminals; input and output devices, computer programs, magnetic tape; magnetic disks; diskettes; modems; books, business forms, typewriter ribbons, educational publications and type fonts.

DATE: September 13, 1985.

FOR FURTHER INFORMATION CONTACT: Beatrice Moore, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, D.C 20229 (202-566-5765).

Dated: September 5, 1985.

DONALD W. LEWIS,
Director,
Entry Procedures, and Penalties Division.

[Published in the Federal Register, September 13, 1985 (50 FR 37467)]

(T.D. 85-145)

Antidumping or Countervailing Duties; Acceptance of Cash Deposits; Bonds, or Other Security to Obtain Release of Merchandise; Revision of T.D. 82-56

There is published below the text of a memorandum of agreement between the U.S. Department of Commerce and the U.S. Customs Service concerning the acceptance of cash desposits, bonds, or other security to obtain the release of merchandise subject to antidumping or countervailing duties. This revises the agreement published as T.D. 82-56.

(BON-1)

Dated: September 5, 1985.

GEORGE C. STEUART
(For Edward B. Gable, Jr., Director,
Carriers, Drawback and Bonds Division).

MEMORANDUM OF AGREEMENT BETWEEN THE U.S. DEPARTMENT OF COMMERCE AND THE U.S. CUSTOMS SERVICE CONCERNING ACCEPTABLE SECURITY FOR RELEASE OF MERCHANDISE SUBJECT TO ANTIDUMPING AND COUNTERVAILING DUTY PROCEEDINGS

This Memorandum of Agreement, concluded under the authority of Title VII of the Tariff Act of 1930, as amended, and section 5(a)(1)(C) of Reorganization Plan No. 3 of 1979, specifies that the U.S. Customs Service will accept cash deposits, bonds or other security, as specified below, prior to releasing for consumption in the customs territory of the United States merchandise that is or may be subject to the assessment of antidumping or countervailing duties, or both, under section 303 or Title VII of the Tariff Act of 1930, as amended (19 U.S.C. 1303 and subtitle IV). This memorandum of agreement supersedes T.D. 82-56, the previous memorandum of agreement on the same subject. It applies to merchandise entered, or withdrawn from warehouse, for consumption on or after February 18, 1985.

Unless specifically instructed by the Secretary of Commerce or a designee to accept another form of security or a cash deposit for estimated duties, the U.S. Customs Service may accept, at its discretion, any one of the following forms of security for payment of

estimated antidumping or countervailing duties, or both, on merchandise entered for consumption in the United States:

(1) A single entry basic importation and entry bond, as described in 19 C.F.R. 113.62, in the amount of the estimated antidumping or countervailing duty, or both, determined by the Secretary of Commerce, in addition to any other bond for other entry requirements;

(2) If the amount of the estimated antidumping or countervailing duty is less than 5 percent *ad valorem* (or the equivalent), a single entry basic importation and entry bond, as described in 19 C.F.R. 113.62, in an amount sufficient to cover the amount of the estimated antidumping or countervailing duty, or both, determined by the Secretary of Commerce, and all other entry bonding requirements;

(3) If the amount of the estimated antidumping or countervailing duty is less than 5 percent *ad valorem* (or the equivalent), a continuous basic importation and entry bond, as described in 19 C.F.R. 113.62, in an amount sufficient to cover the amount of the estimated antidumping or countervailing duty, or both, determined by the Secretary of Commerce, and all other entry bonding requirement; or

(4) (Transition rule) The single or term consumption entry bond, as described in 19 C.F.R. 113.14(g) (1984), accepted prior to February 18, 1985, which the U.S. Customs Service considers sufficient to cover the bonding requirements of the additional entry or entries.

When instructed by the Secretary of Commerce to release a bond taken as security for collection of antidumping or countervailing duties, the U.S. Customs Service will release and return the bond only if it is a single entry bond described above in paragraph (1) or (4). The Customs Service will not release, return, or adjust charges on the bond if it is a bond described above in paragraph (2) or (3), or a term bond described in paragraph (4).

Dated: July 1, 1985.

ALAN F. HOLMER,
Deputy Assistant Secretary for Import Administration,
U.S. Department of Commerce.

Dated: August 8, 1985.

ROBERT P. SCHAFFER,
Assistant Commissioner (Commercial Operations),
U.S. Customs Service.

(T.D. 85-146)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c), has certified buying rates for the dates and foreign currencies shown below. The

rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:	
August 1, 1985	$0.007616
August 2, 1985	.007590
Israel shekel:	
August 1–2, 1985	N/A
South Korea won:	
August 1, 1985	.001139
August 2, 1985	.001136
Taiwan N.T. dollar:	
August 1, 1985	.024789
August 2, 1985	.024771

(LIQ-03-01 S:COM CIE)

Dated: August 2, 1985.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 85-147)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:	
August 5, 1985	$0.007587
August 6, 1985	.007539
August 7, 1985	.007530
August 8, 1985	.007544
August 9, 1985	.007536
Israel shekel:	
August 5–9, 1985	N/A
South Korea won:	
August 5, 1985	.001133

August 6, 1985	.001133
August 7, 1985	.001130
August 8–9, 1985	.001128
Taiwan N.T. dollar:	
August 5, 1985	.024728
August 6, 1985	.024740
August 7, 1985	.024752
August 8, 1985	N/A
August 9, 1985	.024716

(LIQ–03–01 S:COM CIE)

Dated: August 9, 1985.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 85–148)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:	
August 12, 1985	$0.007576
August 13, 1985	.007622
August 14, 1985	.007607
August 15, 1985	.007710
August 16, 1985	.007639
Israel shekel:	
August 12–16, 1985	.N/A
South Korea won:	
August 12, 1985	.001129
August 13, 1985	.001168
August 14–16, 1985	.001129
Taiwan N.T. dollar:	
August 12, 1985	.024655
August 13, 1985	.024673
August 14, 1985	.024667

August 15, 1985	.024643
August 16, 1985	.024631

(LIQ-03-01 S:COM CIE)

Dated: August 16, 1985.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 85-149)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:	
August 19, 1985	$0.007634
August 20, 1985	.007634
August 21, 1985	.007579
August 22, 1985	.007634
August 23, 1985	.007634
Israel shekel:	
August 19-23, 1985	.N/A
South Korea won:	
August 19-20, 1985	.001130
August 21-23, 1985	.001129
Taiwan N.T. dollar:	
August 19, 1985	.024649
August 20, 1985	.024661
August 21, 1985	.024679
August 22-23, 1985	N/A

(LIQ-03-01 S:COM CIE)

Dated: August 23, 1985.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 85–150)

Foreign Currencies—Daily Rates for Countries Not on Quarterly list

The Federal Reserve Bank of New York, pursuant to section 522(c)), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:	
August 26, 1985	$0.007619
August 27, 1985	.007530
August 28, 1985	.007602
August 29, 1985	.007564
August 30, 1985	.007463
Israel shekel:	
August 26–30, 1985	N/A
South Korea won:	
August 26, 1985	.001129
August 27, 1985	.001128
August 28, 1985	.001127
August 29, 1985	.001128
August 30, 1985	.001127
Taiwan N.T. dollar:	
August 26, 1985	.024716
August 27, 1985	N/A
August 28, 1985	.024716
August 29–30, 1985	.024697

(LIQ–03–01 S:COM CIE)

Dated: August 30, 1985.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 85–151)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from

the quarterly rate published in Treasury Decision 85-113 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Australia dollar:	
August 1, 1985	$0.71600
August 2, 1985	.71750
Austria schilling:	
August 1, 1985	.050403
August 2, 1985	.050410
Belgium franc:	
August 1, 1985	.017528
August 2, 1985	.017528
Brazil cruzeiro:	
August 1, 1985	N/A
August 2, 1985	.000154
Denmark krone:	
August 1, 1985	.098522
August 2, 1985	.098232
Finland markka:	
August 1, 1985	.167476
August 2, 1985	.166806
France franc:	
August 1, 1985	.116279
August 2, 1985	.116043
Germany deutsche mark:	
August 1, 1985	.354233
August 2, 1985	.353982
India rupee:	
August 2, 1985	.087413
Ireland pound:	
August 1, 1985	1.1035
August 2, 1985	1.1015
Netherlands guilder:	
August 1, 1985	.315457
August 2, 1985	.315060
New Zealand dollar:	
August 1, 1985	.52700
August 2, 1985	.52600
Norway krone:	
August 1, 1985	.120700
August 2, 1985	.120773
Republic of South Africa rand:	
August 1, 1985	.44800
August 2, 1985	.45150

Spain peseta:	
August 1, 1985	.006068
Switzerland franc:	
August 1, 1985	.431034
August 2, 1985	.432152
United Kingdom pound:	
August 1, 1985	1.3810
August 2, 1985	1.3710

(LIQ-03-01 S:COM CIE)

Dated: August 2, 1985.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 152)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 85-113 for the following countries. therefore, as to entries covering merchandise exported on the date listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Australia dollar:	
August 5, 1985	$0.71850
August 6, 1985	.71150
August 7, 1985	.70550
August 8, 1985	.70450
August 9, 1985	.70800
Austria schilling:	
August 5, 1985	.050371
August 6, 1985	.049950
August 7, 1985	.050006
August 8, 1985	.050125
August 9, 1985	.050119
Belgium franc:	
August 5, 1985	.017507
August 6, 1985	.017422
August 7, 1985	.017431
August 8, 1985	.017476
August 9, 1985	.017464

Brazil cruzeiro:	
August 5, 1985	.000154
August 6, 1985	.000153
August 7–9, 1985	.000152
Denmark krone:	
August 5, 1985	.098232
August 6, 1985	.097324
August 7, 1985	.097352
August 8, 1985	.097752
August 9, 1985	.097656
Finland markka:	
August 5, 1985	.166945
August 8, 1985	.166389
August 9, 1985	.166182
France franc:	
August 5, 1985	.116077
August 6, 1985	.115121
August 7, 1985	.114910
August 8, 1985	.115580
August 9, 1985	.115540
Germany deutsche mark:	
August 5, 1985	.353857
August 6, 1985	.350877
August 7, 1985	.351247
August 8, 1985	.353482
August 9, 1985	.353170
Ireland pound:	
August 5, 1985	1.1020
August 6, 1985	1.0945
August 7, 1985	1.0980
August 8, 1985	1.1020
August 9, 1985	1.1025
Netherlands guilder:	
August 5, 1985	.314861
August 6, 1985	.311818
August 7, 1985	.312207
August 8, 1985	.314861
August 9, 1985	.314268
New Zealand dollar:	
August 5, 1985	.52980
August 6, 1985	.52800
August 7, 1985	.52650
August 8, 1985	.53100
August 9, 1985	.53350
Norway krone:	
August 5, 1985	.120446
August 8, 1985	.120337

Republic of South Africa rand:	
August 5, 1985	.45050
August 6, 1985	.43850
August 7, 1985	.44900
August 8, 1985	.46800
August 9, 1985	.46000
Sweden krona:	
August 8, 1985	.120048
Switzerland franc:	
August 5, 1985	.430200
August 6, 1985	.423280
August 7, 1985	.423370
August 8, 1985	.427259
August 9, 1985	.427168

(LIQ-03-01 S:COM CIE)

Dated: August 9, 1985.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 85-153)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 85-113 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Australia dollar:	
August 12, 1985	$0.71530
August 13, 1985	.71250
August 14, 1985	.70520
August 15, 1985	N/A
August 16, 1985	.70280
Austria schilling:	
August 12, 1985	.050787
August 13, 1985	.051086
August 14, 1985	.051007
August 15, 1985	.051526

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August 16, 1985	.051520
Belgium franc:	
August 12, 1985	.017677
August 13, 1985	.017730
August 14, 1985	.017677
August 15, 1985	.017825
August 16, 1985	.017825
Brazil cruzeiro:	
August 12, 1985	.000151
August 13–14, 1985	.000150
August 15–16, 1985	.000149
Denmark krone:	
August 12, 1985	.099010
August 13, 1985	.099206
August 14, 1985	.098985
August 15, 1985	.099900
August 16, 1985	.099950
Finland markka:	
August 12, 1985	.168350
August 13, 1985	.168776
August 14, 1985	.168110
August 15, 1985	.169635
August 16, 1985	.169851
France franc:	
August 12, 1985	.116891
August 13, 1985	.117371
August 14, 1985	.117165
August 15, 1985	.118413
August 16, 1985	.118547
Germany deutsche mark:	
August 12, 1985	.357398
August 13, 1985	.358809
August 14, 1985	.358295
August 15, 1985	.361795
August 16, 1985	.362582
Ireland pound:	
August 13, 1985	1.1190
August 14, 1985	1.1143
August 15, 1985	1.1245
August 16, 1985	1.1245
Netherlands guilder:	
August 12, 1985	.317813
August 13, 1985	.319285
August 14, 1985	.318269
August 15, 1985	.321388
August 16, 1985	.321854
New Zeland dollar:	
August 12, 1985	.54460

August 13, 1985	.55600
August 14, 1985	.54880
August 15, 1985	.54050
August 16, 1985	.53500
Norway krone:	
August 12, 1985	.121065
August 13, 1985	.121581
August 14, 1985	.121308
August 15, 1985	.122324
August 16, 1985	.122324
Portugal escudo:	
August 15, 1985	.006024
August 16, 1985	.006024
Republic of South Africa rand:	
August 12, 1985	.47900
August 13, 1985	.45550
August 14, 1985	.45500
August 15, 1985	.44600
August 16, 1985	.41500
Spain peseta:	
August 12, 1985	.006062
August 13, 1985	.006083
August 14, 1985	.006072
August 15, 1985	.006127
Sweden krona:	
August 12, 1985	.120048
August 13, 1985	.120409
August 14, 1985	.120192
August 15, 1985	.121212
August 16, 1985	.121322
Switzerland franc:	
August 12, 1985	.434122
August 13, 1985	.434972
August 14, 1985	.434405
August 15, 1985	.441112
August 16, 1985	.442674
United Kingdom pound:	
August 12, 1985	1.3835
August 13, 1985	1.3880
August 14, 1985	1.3840
August 15, 1985	1.3965
August 16, 1985	1.3995

(LIQ-03-01 S:COM CIE)

Dated: August 16, 1985.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 85-154)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 85-113 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Australia dollar:	
August 19, 1985	$0.70600
August 20, 1985	.70900
August 21, 1985	.70650
August 22, 1985	.70600
August 23, 1985	.70400
Austria schilling:	
August 19, 1985	.051493
August 20, 1985	.051586
August 21, 1985	.051243
August 22, 1985	.051975
August 23, 1985	.051720
Belgium franc:	
August 19, 1985	.017857
August 20, 1985	.017746
August 21, 1985	.017835
August 22, 1985	.017969
August 23, 1985	.017950
Brazil cruzeiro:	
August 19-20, 1985	.000148
August 21-22, 1985	.000147
August 23, 1985	.000146
Denmark krone:	
August 19, 1985	.099850
August 20, 1985	.099256
August 21, 1985	.099676
August 22, 1985	.100266
August 23, 1985	.100000

Finland markka:	
August 19, 1985	.169635
August 20, 1985	.168634
August 21, 1985	.168776
August 22, 1985	.170518
August 23, 1985	.169779
France franc:	
August 19, 1985	.118540
August 20, 1985	.117855
August 21, 1985	.118343
August 22, 1985	.119296
August 23, 1985	.118906
Germany deutsche mark:	
August 19, 1985	.361795
August 20, 1985	.359906
August 21, 1985	.361533
August 22, 1985	.364631
August 23, 1985	.363240
Ireland pound:	
August 19, 1985	1.1235
August 20, 1985	1.1185
August 21, 1985	1.1245
August 22, 1985	1.1320
August 23, 1985	1.1300
Italy lira:	
August 22, 1985	.000543
Japan yen:	
August 22, 1985	.004240
Netherlands guilder:	
August 19, 1985	.321182
August 20, 1985	.319489
August 21, 1985	.321027
August 22, 1985	.324097
August 23, 1985	.322581
New Zealand dollar:	
August 19, 1985	.52400
August 20, 1985	.53600
August 21–23, 1985	.53900
Norway krone:	
August 19, 1985	.122287
August 20, 1985	.120482
August 21, 1985	.121655
August 22, 1985	.122639
August 23, 1985	.122504
Portugal escudo:	
August 19, 1985	.006024
August 22, 1985	.006042

Republic of South Africa rand:	
August 19, 1985	.41300
August 20, 1985	.41200
August 21–22, 1985	.40000
August 23, 1985	.40300
Spain peseta:	
August 19, 1985	.006137
August 20, 1985	.006120
August 21, 1985	.006099
August 22, 1985	.006180
August 23, 1985	.006144
Sweden krona:	
August 19, 1985	.121212
August 20, 1985	.120736
August 21, 1985	.120736
August 22, 1985	.121684
August 23, 1985	.121507
Switzerland franc:	
August 19, 1985	.442184
August 20, 1985	.438789
August 21, 1985	.440917
August 22, 1985	.445633
August 23, 1985	.443853
United Kingdom pound:	
August 19, 1985	1.3990
August 20, 1985	1.3890
August 21, 1985	1.3923
August 22, 1985	1.4075
August 23, 1985	1.4010

(LIQ-03-01 S:COM CIE)

Dated: August 23, 1985.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 85-155)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 552(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 85-113 for the following countries. Therefore, as to entries covering merchandise

exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Australia dollar:	
August 26, 1985	$0.70250
August 28–29, 1985	.70300
August 30, 1985	.70150
Austria schilling:	
August 26, 1985	.051335
August 27, 1985	.050994
August 28, 1985	.051361
August 29, 1985	.051131
August 30, 1985	.050627
Belgium franc:	
August 26, 1985	.017794
August 27, 1985	.017699
August 28, 1985	.017835
August 29, 1985	.017768
August 30, 1985	.017581
Brazil cruzeiro:	
August 26, 1985	N/A
August 27, 1985	.000145
August 28, 1985	.000145
August 29, 1985	.000144
August 30, 1985	.000143
Denmark krone:	
August 27, 1985	.098328
August 28, 1985	.099049
August 29, 1985	.098814
August 30, 1985	.098039
Finland markka:	
August 26, 1985	.169062
August 27, 1985	.168237
August 28, 1985	.169348
August 29, 1985	.168776
August 30, 1985	.167294
Franc franc:	
August 26, 1985	.118120
August 27, 1985	.117371
August 28, 1985	.118133
August 29, 1985	.117786
August 30, 1985	.116448
Germany deutsche mark:	
August 26, 1985	.360685
August 27, 1985	.358166
August 28, 1985	.360750
August 29, 1985	.359906

August 30, 1985	.355745
Ireland pound:	
August 26, 1985	1.1215
August 27, 1985	1.1160
August 28, 1985	1.1233
August 29, 1985	1.1180
August 30, 1985	1.1060
Netherlands guilder:	
August 26, 1985	.320513
August 27, 1985	.318573
August 28, 1985	.320307
August 29, 1985	.319489
August 30, 1985	.316356
New Zealand dollar:	
August 26, 1985	.53300
August 27, 1985	.53250
August 28, 1985	.53350
August 29, 1985	.53900
August 30, 1985	.54250
Norway krone:	
August 26, 1985	.121766
August 27, 1985	.121286
August 28, 1985	.121981
August 29, 1985	.121618
August 30, 1985	.121139
Republic of South Africa rand:	
August 26, 1985	.39350
August 27, 1985	.35500
August 28–30, 1985	N/A
Spain peseta:	
August 26, 1985	.006120
August 27, 1985	.006088
August 28, 1985	.006150
August 29, 1985	.006126
August 30, 1985	.006053
Sweden krona:	
August 26, 1985	.120809
August 27, 1985	.120337
August 28, 1985	.120977
August 29, 1985	.120642
August 30, 1985	.120120
Switzerland franc:	
August 26, 1985	.440529
August 27, 1985	.437063
August 28, 1985	.441209
August 29, 1985	.438500
August 30, 1985	.432900

Thailand baht:	
August 26, 1985	N/A
United Kingdom pound:	
August 26, 1985	1.4073
August 27, 1985	1.3930
August 28, 1985	1.4015
August 29, 1985	1.3995
August 30, 1985	1.3910

(LIQ-03-01 S:COM CIE)
Dated: August 30, 1985.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 85-156)

Customs Broker Licenses—Revocation

Revocation of Customs Broker's Licenses No. 4549 and 5522

Notice is hereby given that the Assistant Secretary of the Treasury, on August 26, 1985, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and Part 111 of the Customs Regulations, as amended (19 CFR Part 111), revoked the individual Customs broker's license No. 4549 issued to Allen Robbins, Miami, Florida, for the Customs District of Miami, Florida, and the individual Customs broker's license No. 5522 issued to Stuart Robbins, Coral Gables, Florida, for the Customs District of Miami, Florida. This decision effectively revokes the license of the corporate entity Robbins, Inc., license No. 5390. The decision is effective as of 30 days from the publication date of this notice.

WILLIAM VON RAAB,
Commissioner of Customs.

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19 CFR Part 4

(T.D. 85-109)

Passengers on Foreign Vessels Taken on Board and Landed in the United States

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error of omission in a document which amended the Customs Regulations relating to passen-

gers on foreign vessels taken aboard and landed in the U.S. The document was published in the Federal Register on Monday, July 1, 1985 (50 FR 26981).

FOR FURTHER INFORMATION CONTACT: Paul G. Hegland, Carrier Rulings Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5706).

SUPPLEMENTARY INFORMATION:

BACKGROUND

In FR Doc. 85–15753, appearing at page 26981 in the issue of Monday, July 1, 1985, on page 26984, in the second column, the definition of "Nearby foreign port" in § 4.80a, Customs Regulations (19 CFR 4.80a), erroneously omitted the words "the Bermuda Islands" from the list of ports considered to be nearby foreign ports. The Bermuda Islands have been included in the definition of nearby foreign port in the Customs Regulations since 1969, and there was never any intention to omit their mention in the most recent amendment to § 4.80a, Customs Regulations, accomplished by T.D. 85–109. Accordingly, the words "the Bermuda Islands," should be inserted into the paragraph so that it reads as follows:

(2) *Nearby foreign port* means any foreign port in North America, Central America, the Bermuda Islands, or the West Indies (including the Bahama Islands, but not including the Leeward Islands of the Netherlands Antilles, i.e., Aruba, Bonaire, and Curacao). A port in the U.S. Virgin Islands shall be treated as a nearby foreign port.

Dated: September 11, 1985.

B. JAMES FRITZ,
Director,
Regulations Control and Disclosure Law Division.

U.S. Customs Service

Customs Service Decision

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., September 11, 1985.

The following decision of the United States Customs Service is of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

B. JAMES FRITZ,
Director,
Regulations Control and Disclosure Law Division.

(C.S.D. 85-47)

This ruling holds that for purposes of country of origin marking, imported orange juice concentrate which is used in the production of frozen concentrated orange juice or reconstituted orange juice is not substantially transformed after undergoing further processing in the United States. This would include testing, blending, the addition of orange essences and oils, pasteurization, freezing and repacking (19 U.S.C. 1304).

September 4, 1985
MAR 2-05 CO:R:R:E
728557 LR

This ruling concerns the country of origin marking requirements applicable to retail packages of frozen concentrated orange juice and orange juice from concentrate.

ISSUE

Whether retail packages of frozen concentrated orange juice and single-strength orange juice from concentrate, both of which are made from foreign orange juice concentrate for manufacturing, must be marked to indicate that the products contain foreign concentrate. The retail packages must be marked with the country of origin unless the domestic processing described below substantially transforms the foreign concentrate.

FACTS

The imported product is concentrated orange juice for manufacturing (COJM). In order to make this product, fresh oranges grown abroad are tested for solid content and run through an extractor and a finisher which squeeze the juice from the fruit and the juice cells. The juice then is subject to an evaporation process whereby it is reduced to about 14 percent of its original volume and cooled. A small amount of orange oil may be added to the manufacturing concentrate to prevent staleness. The Brix level of the completed concentrate is between 63 and 67. (Brix is a scale for measuring the concentration of the solids in an orange juice product).

In the United States, the COJM undergoes the following processing to produce either frozen concentrate (triple strength frozen orange juice sold in cans) or orange juice from concentrate (single strength orange juice sold in cans or cartons ready for consumption):

Testing to determine the Brix, acid level, and temperature of the imported material;

Blending the imported concentrate with:

(1) other batches of concentrate, either foreign or domestic, to achieve the desired flavor, color and viscosity, pulp content and Brix/acid ratio. (According to the submission, individual processors use different ratios of foreign to domestic manufacturing concentrate. It is claimed that a 50/50 or 30/70 blend is believed to be reasonably representative of manufacturing concentrate ratios common in the U.S. industry at the present time).

(2) purified and dechlorinated water to reduce the Brix from 65 to 41.8–45, depending on the product qualities desired; and

(3) orange essences and oils that the juice lost in the evaporation process abroad, added in order to provide the volatile flavoring constituents for fresh orange juice flavor. Some processors also add fresh orange juice or pulpy juice to further dilute the concentrate and impart pulp characteristics.

Quality control and production tests to determine the characteristics and quality of the product (presence of defects, foreign material, evaluation of color and flavor, *etc.*).

Freezing (in the case of frozen concentrated orange juice);

Pasteurizing (in the case of orange juice from concentrate);

Packing in cans or cartons; and

Testing of samples for compliance with USDA standards.

Under consideration is a formal ruling request in support of the position that the retail packages of orange juice do not require country of origin marking because the above processing results in a substantial transformation of the imported concentrate. Other interested parties have submitted comments both in support of and in opposition to the marking of the retail packages of orange juice.

APPLICABLE LAW

Section 304 of the Tariff Act of 1930, as amended, requires, with certain exceptions, that all articles of foreign origin or their containers imported into the United States be legibly and conspicuously marked in such a manner as to indicate to an "ultimate purchaser" in the United States the English name of the country of origin of the article (19 U.S.C. 1304). In section 134.1(d) of the Customs regulations, the "ultimate purchaser" is described generally as "the last person in the United States who will receive the article in the form in which it was imported (19 CFR 134.1(d)). The regulation further states that "if an imported article will be used in manufacture, the manufacturer may be the ultimate purchaser if he subjects the imported article to a process which results in a substantial transformation of the article." In such case, the retail product need not be marked with the foreign country of origin. However, if the manufacturing process is merely a minor one which leaves the identity of the imported article intact, the regulation provides that the consumer is regarded as the ultimate purchaser and the article must be marked.

It is a well-settled principle of Customs law that in order for a substantial transformation to be found, a new article having a new name, character, and use, must emerge from the processing. *United States* v. *Gibson-Thomsen Co. Inc.,* 27 C.C.P.A. 267, C.A.D. 98 (1940). Various criteria have been relied on by the courts to determine whether there is a substantial transformation. The most recent pronouncement on this issue in the area of country of origin marking is contained in *Uniroyal Inc.* v. *United States,* 3 C.I.T. 220, 542 F. Supp. 1026 (1982), *aff'd,* 702 F.2d 1022 (Fed. Cir. 1983) in which the court considered the complexity and cost of the processing operations and whether the essence of the article has been changed by such processing. In *Uniroyal,* the imported article was a shoe upper. The outsole was attached in the United States. The court found that there was no substantial transformation because it would be misleading to allow the public to believe that a shoe is made in the United States when the entire upper—which is the very essence of the completed shoe—is made in Indonesia and the only step in the manufacturing process performed in the United States is the attachment of an outsole.

Other factors that have been considered include whether the processing significantly enhances the value of the article undergoing the processing, *United States* v. *Murray,* 621 F. 2d 1163 (1st Cir. 1980) and whether the processing converted producers' goods into consumers' goods, *Midwood Industries Inc.* v. *United States,* 64 Cust. Ct. 499, C.D. 4026, 313 F. Supp. 951, (1970).

No matter how the test is applied, the courts recognize that each case must be decided on its own particular facts keeping in mind the purpose of the marking statute, to provide the ultimate consumer with information to choose between domestic and foreign

products *See United States* v. *Friedlander & Co.*, 27 C.C.P.A. 297, C.A.D. 104 (1940) *Globemaster, Inc.* v. *United States*, 68 Cust. Ct. 77, C.D. 4340, 340 F. Supp. 974 (1972).

Since the decision in *Uniroyal*, a new regulation incorporating Customs interpretation of this and other cases was drafted on the issue of substantial transformation. Section 12.130(b) of the Customs regulations, which applies specifically to the country of origin of textile products, established a two-prong test to determine whether a product has undergone a substantial transformation. This section provides in pertinent part that a textile product produced in more than one country shall be a product of the country where it last underwent a substantial transformation and that a textile or textile product will be considered to have undergone a substantial transformation if it has been transformed *by means of a substantial manufacturing or processing operation into a new and different article of commerce* (emphasis added). The regulation sets forth the criteria both for determining whether a new and different article of commerce results and whether the merchandise has been subjected to substantial manufacturing or processing operations. However, it emphasizes that *one or any combination of criteria may be determinative in a given case* and that additional factors may be considered.

Pursuant to section 12.130(d)(1), a new and different article of commerce will usually result from a manufacturing or processing operation if there is a change in commercial designation or identity, fundamental character or commercial use. Pursuant to 12.130(d)(2), factors to be considered in determining whether merchandise has been subjected to substantial manufacturing or processing operations include: the physical change in the article as a result of the processing, the time involved in processing, the complexity of the processing, the level or degree of skill and/or technology required, and the value added to the article.

Although these rules specifically apply only to determine the country of origin of textiles, it is our view as previously stated in T.D. 85-38 announcing the new regulation, that since these rules are derived from Customs interpretation of various court cases, most particularly *Uniroyal*, they are relevant for all purposes including country of origin marking.

Arguments Presented

In this case, it is claimed that the imported product, manufacturing concentrate, is substantially transformed when used in the production of frozen concentrate or reconstituted orange juice because the end products differ in name, character, and use from the imported product. The following is a summary of these arguments:

Different Names

The imported product is known in the trade as "concentrated orange juice for manufacturing", whereas the products emerging from the processing operation are designated as "frozen concentrated orange juice" and "orange juice from concentrate". Reference is made to the fact that these are the FDA standards of identity contained in 21 CFR 145 and 21 CFR 146.146.

Different Character

The imported products and the end products differ in Brix values (COJM commonly has a Brix of 65, frozen concentrate orange juice a Brix of 41.8–43, and reconstituted juice a Brix of 11.8); the amount of water present in each product (COJM is 35% water, frozen concentrate orange juice is 57–59% water, and orange juice from concentrate is 88% water); in physical characteristics (COJM is a viscous substance, frozen concentrate a rock-hard solid, and orange juice from concentrate a liquid), and flavor (COJM has very different flavor characteristics from both frozen concentrate and orange juice from concentrate due to the restoration of flavorings in the United States).

Different Use

The imported product is a producers' product inasmuch as it has a special value only for manufacturers of orange juice and other orange-based products whereas the end products are consumers' goods. The imported product, even after dilution by the consumer, would lack virtually all of the sensory qualities associated by the consumer with "fresh squeezed orange juice".

It is also claimed that the process of manufacturing COJM into frozen concentrated orange juice and orange juice from concentrate is a complex and time-consuming operation that adds significant value to the imported product. Thus, it is argued that the criteria for finding a substantial transformation applied in *Murray* and *Uniroyal, supra* is satisfied. It is claimed that the domestic processing operations generally account for the vast majority of the finished products' volume and total processing time, contribute most of the value added to the finished products, and require more skill than the production of the initial ingredient. The brief in support of the ruling request presents a detailed analysis of these claims.

ANALYSIS

To find a substantial transformation in this case it would be necessary to conclude that the domestic processing changes the imported orange juice concentrate into a new and different article of commerce and that such processing is considered substantial.

We find that the processing in the United States of imported concentrated orange juice for manufacturing (COJM) does not create a new and different article of commerce.

First, we do not place much weight on the fact that the FDA's standards of identity refer to the imported product as concentrated orange juice for manufacturing as opposed to frozen concentrated orange juice and orange juice from concentrate. These are technical terms of art which merely refer to the same product, orange juice, at different stages of production. We note that for tariff classification purposes, Congress only distinguishes between fresh orange juice and concentrated orange juice. The latter includes juice made from concentrate.

Second, in view of *Uniroyal,* we do not place much weight on the fact that the imported product is sold to producers whereas the retail product is sold to consumers. Certainly the imported shoe upper in *Uniroyal* was not saleable to the public in its imported condition. Nonetheless, the court found that there was no substantial transformation. The fact that one product is an unfinished form of the final product is not determinative. Since in this case it appears that most, if not all, of the imported product is used to make orange juice as opposed to some other product, we believe that the commercial use of the imported product is not changed significantly.

Most important, however, is the fact that the processing does not change the fundamental character of the imported product. Although it is implied by the petitioner that the COJM is virtually insignificant in the making of the end product, we see it as the essential ingredient. This is the product which is derived directly from the fresh oranges. Without this ingredient there would be no final product that looked or tasted like fresh orange juice. Although the domestic operations through testing, and blending, *etc.* attempt to achieve a uniform retail product and may in fact improve the taste of the final product, we believe that it is the imported concentrate which imparts the essential character to the juice and makes it orange juice. As in *Uniroyal,* the very essence of the final product is imparted prior to importation. The processing performed in the United States described above, while necessary to produce a saleable retail product, does not change its fundamental character. We find this factor to be determinative in this case.

Neither the varying amounts of water nor the different Brix values in the imported and finished products (resulting in different physical characteristics of the products) are key factors since Customs has previously held that a mere dilution does not constitute a substantial transformation; nor does a reduction in the brix. (*See* Ruling Nos. 711651 and 712184). Further, we do not believe that the addition of essence and oils to the imported product significantly changes it. As stated above, although these additions may make

the product taste more like fresh orange juice, it is the imported product which makes the final product orange juice.

The present case is similar to the honey case in which Customs held that the processing of refined honey from imported crude honey using a complex process involving liquefaction, flash heating, purification, blending and retail packaging, did not constitute "substantial transformation". C.S.D. 84–112 (July 2, 1984) (Ruling No. 724640). In that case Customs found that *notwithstanding the complex domestic processing* some of which required highly skilled labor, the final result of the domestic processing and blending was merely honey—in a more refined state than imported, *but not fundamentally changed* (emphasis added). None of the processing operations was found to constitute a substantial transformation. Customs rejected the notion that the blending of honeys creates a new and different article of commerce.

As in the honey case, a major processing operation is the blending of imported orange juice with domestic orange juice. It is our view that as with honey, neither the blending nor the additional processing (testing, addition of oils and essence, *etc.*), fundamentally changes the imported product.

Although numerous Customs rulings in the area of drawback have been cited to support the position that the imported product is substantially transformed in the United States, we do not find them relevant since these decisions did not involve the issue of substantial transformation.

After reviewing the arguments presented, it is our position that imported orange juice concentrate is not substantially transformed into a new and different article of commerce and that the consumer, and not the manufacturer, is the last person in the United States who will receive the article in the form in which it was imported. Therefore, the consumer is the ultimate purchaser and is entitled to know whether the orange juice is essentially of foreign origin before deciding whether to make a purchase. As in *Uniroyal*, we believe that the legislative purpose of the marking statute would be thwarted if no country of origin marking was required on the retail package of orange juice.

Since we find that the processing in the United States does not result in a new and different article of commerce, we need not decide whether the processing constitutes a substantial manufacturing or processing operation.

HOLDING

Imported orange juice concentrate which is used in the production of frozen concentrated orange juice or reconstituted orange juice is not substantially transformed after undergoing further processing in the United States including testing, blending, the addition of orange essences and oils, pasteurization or freezing, and repacking.

If the final repacked product of orange juice contains any foreign concentrate entered for consumption or withdrawn from warehouse on or after January 1, 1986, the certification requirements of 19 CFR 134.25 apply. The importer must certify to Customs either that the retail package of orange juice will be properly marked with the country of origin or that he will notify the repacker of the marking requirements. All retail packages of orange juice which are subject to this ruling must be marked either with the country of origin of the imported concentrate (e.g. Brazil) or the phrase "This product contains foreign concentrate from XXXXXXXXXX". If the product contains concentrate from more than one foreign country, the package must list all such countries.

EFFECT ON PREVIOUS CUSTOMS RULINGS

Customs Ruling No. 710823, dated August 17, 1979, which holds that reconstitution of orange juice is a substantial transformation of the frozen concentrate, is overruled.

U.S. Customs Service

General Notice

19 CFR Part 101

Customs Service Field Organization—Chicago, Ill.

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a notice which proposed to amend the Customs Regulations by slightly extending the geographical limits of the port of Chicago, Illinois. After analysis of the comments received in response to the notice and further review of the matter, Customs has determined that there is no need to extend the port limits.

DATE: Withdrawal effective September 11, 1985.

FOR FURTHER INFORMATION CONTACT: Richard Coleman, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8157).

SUPPLEMENTARY INFORMATION:

Background

In the list of Customs regions, districts, and ports of entry set forth in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), the port of Chicago, Illinois, is listed in the Chicago, Illinois, Customs District in the North Central Region. Customs had been requested to extend the eastern boundary of the port so that Michiana Airport, located in South Bend, Indiana, would be within 35 miles of the port limit thereby permitting consideration of its planned request for a foreign-trade zone.

Accordingly, by a document published in the Federal Register on February 11, 1985 (50 FR 5628), it was proposed to expand the existing port limits by slightly extending the eastern boundary to include Interstate 80 from its intersection with Indiana Route 49 to its intersection with Indiana Highway 421 in La Porte County, Indiana. Five comments were received in response to the notice.

ACTION—WITHDRAWAL OF PROPOSAL

Based upon analysis of the comments received, and upon further review of the proposal, Customs has determined that the extended Chicago port limits are not needed. Michiana Regional Airport will receive consideration of its request for a foreign-trade zone regardless of the geographical limits of the port of Chicago. Accordingly, the notice published in the Federal Register on February 11, 1985 (50 FR 5628), is withdrawn.

DRAFTING INFORMATION

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

Dated: September 4, 1985.

WILLIAM VON RAAB,
Commissioner of Customs.

[Published in the Federal Register, September 11, 1985 (50 FR 37004)]

U.S. Court of Appeals for the Federal Circuit

(Appeal No. 85-1259)

NISSHO-IWAI AMERICAN CORP., APPELLEE *v.* UNITED STATES, APPELLANT

Judith M. Barzilay, Commercial Litigation Branch, Department of Justice, of New York, New York, argued for appellant. With her on the brief were *Richard K. Willard*, Acting Assistant Attorney General, *David M. Cohen*, Director and *Joseph I. Liebman*, Attorney in Charge International Trade Field Office.

Peter Jay Baskin, Sharretts, Paley, Carter, & Blauvelt, P.C., of New York, New York, argued for appellee. With him on the brief was *Ned H. Marshak*.

Appealed from: United States Court of International Trade.

Trade Senior Judge BERNARD NEWMAN.

(Appeal No. 85-1259)

NISSHO-IWAI AMERICAN CORP., APPELLEE *v.* UNITED STATES, APPELLANT

(Decided August 30, 1985)

Before KASHIWA, *Circuit Judge*, NICHOLS, *Senior Circuit Judge*, and SMITH, *Circuit Judge*.

KASHIWA, *Circuit Judge*.

This is an appeal from a judgment of the United States Court of International Trade.

The imported merchandise consists of steel products described on the commercial invoices as "pipe fittings" or as "pipe fitting pin and box." It was imported by appellee ("Nissho-Iwai") from Japan and entered the United States at Houston, Texas, in a series of entries in 1979 and 1980. The merchandise was classified by the appropriate Customs Service official under item 610.80, TSUS, as modified by Proclamation No. 3822, 32 Fed. Reg. 19,002 (1967), as other pipe fittings of iron or steel, not cast-iron. Duty was assessed at the rate of 11% *ad valorem*.

Nissho-Iwai claims that the merchandise should have been classified under item 664.05, TSUS, or, pursuant to Presidential Proclamation 4704, its superseding provision, item 664.08, TSUS,

(depending upon date of entry), as parts of other boring machinery, dutiable at 5% or 4.7% *ad valorem*, depending on the date of entry. Nissho-Iwai further claims the imported pipe fittings were used solely as tool joints to join pieces of pipe in a drill string and should therefore be classified as parts of boring equipment.

The Government moved for judgment on the pleadings contending that Nissho-Iwai had admitted in its complaint that the merchandise was pipe fittings and therefore the Government was entitled to judgment as a matter of law. Nissho-Iwai opposed the motion for judgment on the pleadings and cross-moved for summary judgment.

The Government then cross-moved for summary judgment, arguing that *The Servco Co.* v. *United States*, 63 Cust. Ct. 893 (1972), *aff'd*, 477 F.2d 579 (CCPA 1973), should be "limited to its own facts" in the words of the appellate court in that case; that the imported tool joints were pipe fittings within the definition of pipe fittings developed in court decisions; and that item 664.05 did not specifically provide for pipe fittings and therefore headnote 1(iv) to Part 2, Schedule 6, would not operate to bar classification under item 610.80, especially since the provision for pipe fittings is a specific provision. In addition, the Government argued that the two exclusionary headnotes (headnote 1(v) to Part 4, Schedule 6, and headnote 1(iv) to Part 2, Schedule 6) would be nullified by each other and therefore General Interpretative Rule 10(ij) (which provides that a parts provision does not prevail over a specific provision for such a part), would mandate classification in item 610.80, TSUS, since item 610.80, TSUS, had been previously held to be a specific provision within the intendment of Rule 10(ij).

The Court of International Trade in *Nissho-Iwai American Corp.* v. *United States*, 602 F. Supp. 88 (Ct. Int'l Trade 1984) (Newman, S.J.), granted summary judgment to Nissho-Iwai, holding that the imported merchandise had been erroneously classified as pipe fittings in item 610.80, TSUS, and was instead properly classifiable as parts of boring equipment in item 664.05 (or 664.08), TSUS. The issues were thoroughly treated in the opinion. Accordingly, we affirm on the basis of the opinion by Senior Judge Newman.

AFFIRMED

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